

MEMORANDUM TO: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: Laurie Parkhill
Office Director
AD/CVD Enforcement, Office 5

SUBJECT: Issues and Decision Memorandum for the Changed-Circumstances
Review of the Antidumping Duty Order on Ball Bearings and Parts
Thereof from the United Kingdom: SKF (U.K.) Ltd. and SNFA
Bearings Ltd.

Summary

We have analyzed the case and rebuttal briefs of the interested parties in the changed-circumstances review of the antidumping duty order on ball bearings and parts thereof from the United Kingdom. Based on this analysis, we are affirming the preliminary results of this review. We recommend that you approve the positions we have developed in the Discussion of Issues section of this memorandum. Below is a complete list of the issues in this changed-circumstance review for which we received comments and rebuttal comments by the parties:

1. Successorship
2. Effective Date of Determination

Background

On May 27, 2008, the Department of Commerce (the Department) published the preliminary results of the changed-circumstances review of the antidumping duty order on ball bearings and parts thereof from the United Kingdom concerning SKF (UK) Ltd. and SNFA Bearings Ltd. See *Ball Bearings and Parts Thereof from the United Kingdom: Preliminary Results of Changed-Circumstances Review*, 73 FR 30378 (May 27, 2008) (*Preliminary Results*). In the *Preliminary Results*, we determined that SKF (UK) Ltd. is the successor-in-interest to SNFA Bearings Ltd. We also determined that SKF (UK) Ltd. and SNFA Bearings Ltd. are not entitled to separate treatment under the antidumping law. We invited parties to comment on the preliminary results. We received case briefs from The Timken Company and SKF (UK) Ltd. and a rebuttal brief from The Timken Company. No interested party requested a hearing and, thus, we did not hold a hearing.

Company Abbreviations

SKF UK - SKF (UK) Ltd.

SNFA UK – SNFA Bearings Ltd.¹

Timken – The Timken Company

Discussion of Issues

1. Successorship

Comment 1: Citing *Marine Harvest (Chile) S.A. v. United States*, 244 F. Supp. 2d 1364 (CIT 2002), SKF UK and SNFA UK state that the Department has found that, where post-acquisition entities operate, for all intents and purposes, in the same manner as the pre-acquisition entities and the entities have not merged operationally, it is inappropriate to find successorship on the part of the acquired company to the acquiring company. SKF UK and SNFA UK maintain that, despite the relocation of SNFA UK's production facilities to excess space on the grounds of SKF UK's Stonehouse facilities and the legal transfer of assets from SNFA UK to SKF UK, there have been no pertinent changes with respect to operational management, production equipment, supplier bases, or customer relationships. SKF UK and SNFA UK argue that, by ignoring the critical and overwhelming points of similarity between the pre- and post-acquisition operations of SNFA UK and focusing on a few relatively minor changes in SNFA UK's operations, the Department has ignored its own precedent and rendered a preliminary determination that is not supported by the record of the proceeding.

SKF UK and SNFA UK argue that, because their distinct operations each continue to focus on their disparate markets which existed prior to the acquisition, there is no overlap with respect to channels of distribution, products, suppliers, or customers. Additionally, SKF UK and SNFA UK state that the bearings produced by SNFA UK continue to be marked, marketed, and sold under the SNFA brand name and through the SNFA sales organization. Moreover, SKF UK and SNFA UK state, SNFA UK continues to manufacture the same product lines, which consist almost exclusively of high-precision machine-tool bearings, on the same equipment which had been used by SNFA UK prior to the acquisition. SKF UK and SNFA UK question whether the relocation of productive assets, the transfer of legal title, a degree of parent-company oversight, a shared loading dock, and common insurance supplier truly alter the production and sale of subject merchandise.

Timken argues that, contrary to SKF UK and SNFA UK's assertion, the Department acknowledged evidence concerning the similarities between pre- and post-acquisition SNFA UK. Timken explains that the Department focused correctly on the fact that the relocation and legal transfer of assets demonstrate increased operational control and material changes in SNFA UK's management and operations. Timken asserts that a similarity in product range supports the Department's concerns regarding possible production rationalization. Finally, citing *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR

¹ As of January 1, 2008, SNFA UK began operating as a part of SKF UK. For the purposes of this Issues and Decision Memorandum, we have continued to refer to SKF UK's SNFA operations as SNFA UK.

20460 (May 13, 1992), Timken asserts that the Department determined correctly that the two entities are no longer entitled to separate treatment under the antidumping law.

Department's position: As the Department explained in the *Preliminary Results*, the asset transfer, relocation of SNFA UK's production facilities, and the degree of management integration demonstrate to the Department's satisfaction that SKF UK is the successor in interest to SNFA UK. For example, not only are the annual budget plan and capital-investment decisions of SNFA UK now subject to approval by SKF Group Management, the companies have devoted considerable resources to relocating production facilities and constructing sales offices to implement SKF UK's plans of possibly rationalizing production. See Memorandum to Laurie Parkhill entitled "Preliminary Results of Changed-Circumstances Review of the Antidumping Duty Order on Ball Bearings and Parts Thereof from the United Kingdom," dated May 19, 2008, at 2-3. Moreover, no new information has been submitted that would alter the conclusion we reached in the preliminary results. Accordingly, we continue to find, for the reasons stated above, that the management of SNFA UK is materially dissimilar to that before the acquisition both in terms of daily operations and long-term planning. Based on these changes in management and production facilities, we conclude that SKF UK is the successor-in-interest to SNFA UK for purposes of the application of the antidumping law.

2. Effective Date of Determination

Comment 2: Citing *Ball Bearings and Parts Thereof from Italy and the United Kingdom: Initiation of Antidumping Duty Changed-Circumstance Reviews*, 72 FR 10643, 10645 (March 9, 2007), SKF UK and SNFA UK explain that the Department stated that "cash-deposit rates will be altered, if warranted, pursuant only to the final results of these reviews." SKF UK and SNFA UK explain that, despite this statement, SNFA-branded bearings have been subject to antidumping duty deposits since the legal transfer of assets. SKF UK and SNFA UK submit that, even if the preliminary results are not modified, it would be appropriate for the Department to clarify its earlier instructions to the effect that the revocation applies to all entries of bearings produced by either SNFA UK or SKF UK's SNFA operations and sold by either SNFA UK or SKF UK which were entered prior to the publication of the final results of the changed-circumstances review.

Timken asserts that the cash-deposit requirements for SKF UK now apply to all exports by SKF UK including any SNFA UK bearings which would not otherwise have been subject to cash-deposit requirements. Timken requests that, because SNFA UK bearings continue to be marked and marketed under the SNFA brand name and sold by the SNFA sales organization, the Department should clarify that the SNFA branded bearings are now subject to the cash-deposit requirements for SKF UK.

Department's position: Consistent with our determination that SKF UK is the successor-in-interest to SNFA UK, we will instruct U.S. Customs and Border Protection (CBP) to apply the cash-deposit rate for SKF UK to all entries of subject merchandise which were produced by SNFA UK and were entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed-circumstances review. See *Notice of Final*

Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan, 69 FR 67890, 67891 (November 22, 2004).

Concerning the request by SKF UK and SNFA UK that we instruct CBP that our revocation applied to all entries of bearings produced by SNFA UK and exported by either SKF UK or SNFA UK prior to the completion of this changed-circumstances review, such an instruction would not be appropriate. On July 12, 2001, we stated that we are “revoking this order in part with respect to SNFA U.K.” See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part*, 66 FR 36551, 36552 (July 12, 2001). Moreover, we also explained that the decision was based on SNFA UK’s selling practices. Accordingly, the revocation did not apply to bearings which had been produced by SNFA UK and sold by another party such as SKF UK. We will determine the appropriate assessment rate to be applied to any entries of SNFA-branded bearings which were sold by SKF UK and entered, or withdrawn from warehouse, for consumption prior to the publication of these final results during the applicable annual administrative review of the order as provided by section 751(a)(1) of the Tariff Act of 1930, as amended, or 19 CFR 351.212(c), as applicable.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of the changed-circumstances review in the *Federal Register*.

Agree _____ Disagree _____

John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

(Date)